

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR  
THE COMMONWEALTH

SUFFOLK, ss.

NO. SJC- 11693

COMMONWEALTH

v.

NYASANI WATT (AND NINE COMPANION CASES<sup>1</sup>)

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**REPLY OF FOUR DISTRICT ATTORNEYS AND MOTION TO STRIKE**

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The District Attorneys for the Cape and Islands, Essex, Norfolk, and Plymouth Districts ["Four District Attorneys"], respectfully reply to the Opposition of the Suffolk District Attorney and move to strike that Opposition.

The Four District Attorneys have an obligation to seek to intervene and participate in a hearing which this Court has ordered, the sole purpose of which is to create a record for further consideration of the constitutionality of life without parole for 'young adults.' The Four District Attorneys are those who must speak for the several hundred victims of murderers to whom any new rule will apply, and who must speak for the families of those victims. The Four District Attorneys know from past events that the outlawing of sentences previously thought settled would be a devastating blow to the families of murdered victims. The District Attorneys know this well from past events dealing with the fallout of the decision in *Diatchenko*, which outlawed life without parole sentences for

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<sup>1</sup> Four against Nyasani Watt and five against Sheldon Mattis.

juveniles convicted of first degree murder and mandated parole hearings. Their offices guided victims' families through the exceedingly difficult process of coming to terms with the possible release of the person who murdered their loved one.

The Suffolk District Attorney has already stated in her brief in this case that she is in favor of parole eligibility for 'young adults', and also that the life without parole sentence for the 18- year-old convicted of shooting another juvenile twice in the back was unjust. The Four District Attorneys disagree as a matter of policy. As it now stands, without intervention on behalf of the victims and families from the other Counties, the Suffolk District Attorneys publicly announced predisposition will be outcome determinative of the hearing and the record that this Court will receive. The victims, their families, the public and the Court will be ill-served by this process.

The Suffolk District Attorney's Opposition, rather than addressing the substance of the legal questions, is nothing other than an unwarranted *ad hominem* attack, full of vituperative, impertinent and irrelevant character assassination. See *Supreme Council of the Royal Arcanum v. Green*, 237 U.S. 531, 546-47 (1915) (the Court has a duty to strike vituperative, unwarranted, impertinent expressions as to opposing counsel); *Kurker v. Kassler*, 60 Mass. App. Ct. 1122 (2004)(allegations of conspiracy among lawyers, judges and parties were stricken by Superior Court, and Appeals Court affirmed dismissal as "bald, speculative, conclusory, illogical

allegations of conspiracy simply do not state a claim upon which relief may be granted." ).

Indeed, the Opposition is in clear violation of the ethical rules that govern the conduct of attorneys, as it seeks to inject both sex and race into the question of intervention, where it is not an issue at all in this proceeding. Not only does the Suffolk District Attorney both refer to the other elected District Attorneys as racist and misogynistic and paternalistic without any factual foundation or reason, she also demeans the office of the District Attorney that each has been elected to fill, as the Suffolk District Attorney repeatedly (21 times in 8 pages) refers to the other elected District Attorneys as 'men' thus injecting sex irrelevantly and pejoratively into the matter. See S.J.C. Rules of Professional Conduct, Rule 3.4. (i) (A lawyer shall not engage in conduct manifesting bias or prejudice based on, inter alia, sex or race where it is not an issue in the proceeding).

The accusation of racism and misogyny is baffling and astonishing. The issues in this case and subject to the remand order have nothing to do with the Suffolk District Attorney's race or gender, but rather, and as spelled out in the motion of the four district attorneys, differing policy views on the justness of sentences for "young adults" -- i.e. those 18-22 -- convicted of first degree murder, and the need to speak on behalf of the victims of these murderers and the victim's family members.

## CONCLUSION

For these reasons, this Court should (1) strike the Opposition filed by the Suffolk District Attorney, without prejudice to refiling an Opposition properly pleaded without vituperative, scandalous, unethical allegations; and either (2) vacate the remand without prejudice to action by the legislature or the filing of a declaratory judgment action; or, alternatively, (3) permit the Four District Attorneys to intervene and to participate, through their designee, in the evidentiary hearing ordered by this Court upon the remand in the above-captioned case.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that on this day of July 6, 2020, true copies of the REPLY OF FOUR DISTRICT ATTORNEYS AND MOTION TO STRIKE in the case of:

Commonwealth v. Watt No. SJC- 11693

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